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The right to food

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the interim report of the Special Rapporteur on the right to food, Jean Ziegler, submitted in accordance with General Assembly resolution 61/163.

* A/62/150.
** This report is submitted late in order to contain as much updated information as possible.

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Report of the Special Rapporteur on the right to food

Summary

The Special Rapporteur on the right to food is gravely concerned to report to the General Assembly that global levels of hunger continue to rise. The number of people suffering from hunger has increased to 854 million people and has been rising every year since 1996. Virtually no progress has been made on reducing hunger, despite the commitments made by Governments in 1996 at the first World Food Summit and again at the Millennium Summit in 2000. More than 6 million children still die every year from hunger and hunger-related causes before their fifth birthday. This is unacceptable. All human beings have the right to live in dignity, free from hunger. The right to adequate food is a human right.

In the present report, the Special Rapporteur calls the attention of the General Assembly to situations of special concern relating to the right to food, as well as to positive initiatives of Governments to combat hunger. The Special Rapporteur also calls the attention of the General Assembly to two emerging issues: the first is the issue of the potentially grave negative impact of biofuels (or agrofuels) on the right to food. The second is the urgent need to improve protection for people who are fleeing from hunger, famine and starvation in their countries of origin and face numerous human rights violations if they try to cross borders into developed countries.

The Special Rapporteur is gravely concerned that biofuels will bring hunger in their wake. The sudden, ill-conceived, rush to convert food — such as maize, wheat, sugar and palm oil — into fuels is a recipe for disaster. There are serious risks of creating a battle between food and fuel that will leave the poor and hungry in developing countries at the mercy of rapidly rising prices for food, land and water. If agro-industrial methods are pursued to turn food into fuel, then there are risks that unemployment and violations of the right to food may result, unless specific measures are put in place to ensure that biofuels contribute to the development of small-scale peasant and family farming. Instead of using food crops, biofuels should be made from non-food plants and agricultural wastes, reducing competition for food, land and water.

The Special Rapporteur is also gravely concerned about the abuses suffered by the many migrants fleeing hunger, famine and starvation in their own countries, who are treated as little more than criminals if they attempt to cross borders into developed countries. The Special Rapporteur calls the Assembly's attention to the tens of thousands of people who every year risk their lives to flee hunger and continue to be deported back to their countries of origin, even if their lives will be again at risk from hunger and famine. It is time for national and international protection mechanisms to be strengthened, as only then will Governments take seriously their obligations to respect, protect and fulfil the right to food of all human beings around the world.

The report ends with a series of recommendations for Governments on the realization of the right to food.

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I. Introduction

1. The Special Rapporteur on the right to food hereby submits his seventh report to the General Assembly, as requested by the Assembly in its resolution 61/163.

2. The Special Rapporteur is outraged to report that global hunger is still on the rise. According to the latest report of the Food and Agriculture Organization of the United Nations (FAO) on the *State of Food Insecurity in the World 2006*, there has been virtually no progress made on reducing hunger, despite the commitments made by Governments at the first World Food Summit in 1996 and again at the Millennium Summit in 2000. While in 1996 the number of people suffering from undernourishment was estimated to be about 800 million people, the latest Food and Agriculture Organization of the United Nations estimate suggests that there are now 854 million people who do not get enough to eat every day. Every year, more than six million children still die from hunger-related illness before their fifth birthday.

3. This is unacceptable. In a world that is richer than ever before, more people than ever continue to suffer from malnutrition, hunger and starvation. The world can produce enough food to feed twice the entire global population, yet millions go to bed hungry at night. Millions of children still go without adequate food each day, without sufficient macro and micronutrients, and are condemned to stunted physical growth and stunted intellectual development.

4. In a world overflowing with riches, hunger is not inevitable. It is a violation of human rights. The right to food is a human right that protects the right of all human beings to live in dignity, free from hunger. The Special Rapporteur defines the right to food as:

> The right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear.

Activities of the Special Rapporteur

5. In his work over the past year, the Special Rapporteur has continued to promote the right to food among Governments, United Nations agencies and non-governmental organizations around the world. This has included country missions. The Special Rapporteur visited Bolivia from 29 April to 6 May 2007 and submitted a preliminary note on his visit to the Human Rights Council at its fifth session in June 2007 (A/HRC/4/30/Add.2). During the first half of 2007, the Special Rapporteur also received invitations to visit Madagascar and Cuba, which he hopes to take up before the end of the year.

6. As part of his mandate, the Special Rapporteur is also required to receive and respond to information on the right to food and all aspects of the realization of this right. During the reporting period, the Special Rapporteur has therefore sent 63 communications to Governments, requesting further information on specific allegations of violations of the right to food that he has received. A report on all communications sent in 2006 was submitted to the Human Rights Council (A/HRC/4/30/Add.1). A report on all communications sent during 2007 will be

submitted as an addendum to the next report of the Special Rapporteur to the Council.

7. The Special Rapporteur has also continued to work closely with Governments and Parliaments for the promotion of the right to food. On 14 July 2006, he attended an international conference in Rome, "Food Insecurity and the Right to Food", hosted by the Mayor of Rome, Walter Veltroni, and organized in collaboration with the University of Florence and the Unidea-Unicredit Foundation.

8. He has also continued to work closely with United Nations agencies, particularly the World Food Programme (WFP) and FAO. The Special Rapporteur welcomes the fact that on the eve of the commemoration of the sixtieth anniversary of the proclamation by the United Nations of the Universal Declaration of Human Rights, the theme of World Food Day, to be celebrated worldwide on 16 October 2007, will be the right to food. Activities to promote the right to food are being planned in over 150 countries.

9. In order to protect the right to food of children, the Special Rapporteur has followed the work of the United Nations System Standing Committee on Nutrition on the issue of malnutrition, but also on the issue of obesity, particularly in children, and its related problems.[1] He is particularly concerned about corporate marketing practices and corporate lobbying that are contributing directly both to forms of malnutrition and forms of obesity. He believes that Governments and civil society should make all possible efforts to counteract industry lobbying, which has increasingly become stronger in those forums where standards aimed at contributing to the protection of the right to food are discussed and adopted.

10. At the same time, the Special Rapporteur has continued to work with social movements and NGOs involved in human rights and development. He delivered the keynote speech on "eradication of poverty and hunger" at the Civil Society Development Forum 2007 "A Platform for Development: Countdown to 2015", held in Geneva from 28 to 30 June 2007. This forum was organized just prior to the Annual Ministerial Review of the Economic and Social Council, held from 2 to 4 July 2007, which focused on taking stock of the various efforts to eradicate poverty and hunger and achieve Millennium Development Goal 1. The Special Rapporteur has also continued to follow the important work of non-governmental organizations around the world to promote respect of the right to food.

11. The Special Rapporteur continued his close collaboration with academia on issues relevant to the right to food. In November 2006, his team participated at a seminar on "Human rights in the fight against extreme poverty", held in Barcelona and organized by the Fundación la Caixa and the Centre of International Studies of the University of Barcelona.

[1] The Standing Committee on Nutrition, at its 34th session, held from 26 February to 1 March 2007, urged the Special Rapporteur to address issues relating to the double burden of malnutrition.

II. Recent developments with respect to the right to food

A. Positive developments

Horn of Africa

12. The Special Rapporteur has been carefully following the frequent crises of hunger in the Horn of Africa. He welcomes the initiative of six African Governments and the United Nations to establish a road map to tackle the root causes of rising hunger across this region.[2] The multiple causes of food insecurity in the Horn of Africa will be addressed through initiatives to improve food security and increase protection of the right to food of the populations there.[3] The Special Rapporteur calls upon all the actors involved to begin swift implementation of the road map, building on the rich experience available in this region.

Bolivia

13. During his official mission to Bolivia from 29 April to 6 May 2007, the Special Rapporteur observed important positive developments with respect to the realization of the right to food. The Government is taking action to address malnutrition. One quarter of all Bolivian children, mostly indigenous children, are gravely undernourished. The Government's Zero Malnutrition programme could serve as an example to the rest of the world. Resources gained from increasing taxes on the exploitation of Bolivia's oil and gas reserves will go directly towards the Zero Malnutrition programme. New programmes are also being elaborated, focusing on investing in small-scale agriculture, agrarian reforms, the elimination of the persistent slavery of bonded labour and the restitution of lands to indigenous communities.

Peru

14. The Special Rapporteur welcomes an important proposal for the elaboration in Peru of a new law on food security and the realization of the right to food. This proposal was presented to the Peruvian Congress on 15 June 2007. Given that one quarter of young children in Peru suffer from chronic malnutrition, this law will establish a normative basis for the Government's Food Security Policy, clarifying roles and responsibilities concerning the implementation of the right to food and increasing the accountability of the Government to meet its obligations towards the right to food.

Latin America and the Caribbean

15. The Special Rapporteur welcomes the dynamism of the Latin American and Caribbean region in general, and particularly the adoption of the regional initiative to eradicate hunger and guarantee food security under the "Iniciativa América Latina y Caribe sin Hambre". This initiative makes the realization of the right to adequate food for all and at all levels a key priority in the region.

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[2] IRIN, "Governments, United Nations agree on 'road map' to tackle hunger in Africa", 26 June 2007.

[3] Horn of Africa Consultations on Food Security, "Executive summary of country reports for discussion at the multi-country consultation, Nairobi, Kenya, 25-26 June 2007".

B. Situations of special concern

Southern Africa

16. The Special Rapporteur is deeply concerned about the food crises that currently threaten the lives of millions of people across southern Africa. In Lesotho, over 400,000 of the country's population of 1.9 million people face food shortages and are struggling to meet their basic food needs owing to the country's most severe drought in 30 years. As a result the Government has declared a state of emergency and appealed for international assistance.[4] For a population who mostly live on less than US$ 2 per day, exorbitant maize prices have exhausted the coping capacities of many households.[5] In Swaziland, one third of the population is without food after the worst annual maize harvest on record, due to an extended dry spell and high temperatures. This has led to surges in maize prices and reductions in the availability of food, which have affected people's access to food, particularly among the poorest of the poor who live on less than $1 per day.[6] In Zimbabwe, widespread crop failures caused by poor rainfall have exacerbated the economic crisis and have drastically limited access to food for the poorest. A recent FAO/WFP assessment confirmed that an estimated 2.1 million people will require food aid by September 2007 and this number could double by early 2008.

17. The Special Rapporteur is particularly concerned that funding shortfalls are forcing WFP to cut operations across the region. In Zambia, WFP may cut food assistance to 500,000 vulnerable children, widows, orphans and HIV/AIDS patients.[7] In Namibia in January 2007, WFP cut rations to 90,000 orphans and vulnerable children, jeopardizing their access to sufficient food at an age when realizing their right to food is crucial to children's healthy development.[8]

Economic partnership agreements between the African, Caribbean and Pacific countries and the European Union

18. The Special Rapporteur is very concerned about the terms of new agreements being negotiated by the European Union (EU) under new economic partnership agreements with the African, Caribbean and Pacific countries. He would like to draw the urgent attention of all States, particularly members of the EU, to the implications that this may have on the right to food of poor farmers in the developing world. He is particularly concerned about the potential negative impact of greater trade liberalization on peasant farmers in the African, Caribbean and Pacific countries, especially given unfair competition with highly subsidized EU production.[9] In these countries, where up to 80 per cent of the population can be involved in peasant agriculture, unfair competition may push millions of African, Caribbean and Pacific peoples out of agriculture, when there are few other employment options. In addition, the new economic partnership agreements are

[4] IRIN, "Lesotho: Hungry for assistance", 18 July 2007.

[5] FAO and WFP, "Special report: crop and food supply assessment mission to Lesotho", 12 June 2007.

[6] ReliefWeb, "FAO/WFP Crop and food supply assessment mission to Swaziland", 23 May 2007.

[7] *UN News*, "Critical funding shortfall threatens United Nations food lifeline for 500,000 Zambians", 27 February 2007.

[8] IRIN, "Namibia: WFP cuts rations for orphans", 12 January 2007.

[9] See, for example, *Fédération internationale des ligues des droits de l'homme*, Position paper, "Economic partnership agreements (EPA) and human rights", June 2007.

likely to lead to loss of substantial revenue for African, Caribbean and Pacific Governments, which are mostly heavily dependent on import taxes to raise Government revenue.[10] The World Bank, for example, estimates that in sub-Saharan Africa tariff revenues average between 7 and 10 per cent of Government revenue. Eliminating tariffs on EU imports would lower tariff revenues considerably, forcing these countries to cut fiscal expenditure and therefore putting social programmes at risk and affecting Governments' ability to meet their obligations towards economic, social and cultural rights, including the right to food.

III. The impact of biofuels on the right to food

19. Under his mandate, as defined by the Commission on Human Rights, the Special Rapporteur is charged with identifying "emerging issues related to the right to food worldwide" (resolution 2000/10, para. 10 (c)).

20. The present section contains a preliminary examination of an emerging issue that has the potential to threaten the realization of the right to food: global plans to increase rapidly the production of "biofuels" or what is termed by many environmental and social organizations in developing countries, "agrofuels."[11] During his dialogue with Governments at the session of the Human Rights Council in June 2007, the Special Rapporteur was requested to examine urgently the impact of agrofuels on the realization of the right to food. The Special Rapporteur has also received repeated appeals from non-governmental organizations to examine in his reports the impact of these new fuels on hunger and food security.

21. Rushing to turn food crops — maize, wheat, sugar, palm oil — into fuel for cars, without first examining the impact on global hunger is a recipe for disaster. It is estimated that to fill one car tank with biofuel (about 50 litres) would require about 200 kg of maize — enough to feed one person for one year.[12]

22. Already, the new Executive Director of the World Food Programme, Josette Sheeran, has cited new obstacles for the organization, including climate change, soaring commodity prices, caused partly by the rapid growth of major countries like China and India, commodity costs and rising demand for biofuels, which in turn is pushing up global grain prices.[13]

23. The President of the State Council of the Republic of Cuba, Fidel Castro Ruiz, has warned that it is a "sinister idea to transform food into fuel".[14] Lester Brown from the Earth Policy Institute, briefing the United States Senate in June 2006 suggested that, "the stage is now set for direct competition for grain between the 800 million people who own automobiles, and the world's 2 billion poorest people".[15] Increasingly unconvinced of the positive net impact of the production of agrofuels on carbon dioxide emissions, non-governmental organizations have started

[10] Oxfam Briefing Note, "Unequal Partners: how EU-ACP economic partnership agreements (EPAs) could harm the development prospects of many of the world's poorest countries", September 2006.

[11] See para. 24 below and E. Holt-Giménez, "The biofuel myths", *International Herald Tribune*, 10 July 2007.

[12] G. Gendron, Radio Canada, 12 August 2007.

[13] *UN Special*, July 2007, Invité du mois, "Let us make hunger a part of history".

[14] Fidel Castro Ruiz, *Granma*, 27 March 2007.

[15] Cited in Daniel Howden, "The fight for the world's food" in *The Independent*, 23 June 2007.

to call for a global moratorium on the expansion of agrofuels until the potential social, environmental and human rights impacts can be fully examined and appropriate regulatory structures put in place to prevent or mitigate any negative impacts.[16]

24. The sudden explosion of interest in agrofuels is evident in massive increases in investment and the setting of ambitious renewable-fuel targets across the Western countries. The European Union now requires that agrofuels provide 5.75 per cent of member States' transport power by 2010 and 10 per cent by 2020.[17] The United States has set targets to increase usage of agrofuel for energy to 35 billion gallons per year. The President of the United States, George W. Bush, and the President of Brazil, Luiz Inácio Lula da Silva, signed an agreement in March 2007 committing those two countries to increase their ethanol production. But why are agrofuels so suddenly being promoted? One answer is that Governments are finally waking up to the need to do something about global warming and climate change. Another answer is that Governments see the need to reduce dependence on oil for strategic reasons in the current war on terror. In his 2007 State of the Union message, President Bush was explicit about this goal: "It's in our vital interest to diversify America's energy supply ... Let us build on the work we've done and reduce gasoline usage in the United States by 20 per cent in the next 10 years. When we do that we will have cut our total imports by the equivalent of three quarters of all the oil we now import from the Middle East."[18] Garten Rothkopf, author of a new report commissioned by the Inter-American Development Bank, *Blueprint for Green Energy in the Americas*, has argued that Latin America will be the new Middle East: "Latin America will be the Persian Gulf of biofuels, except that of course Latin America is much more stable as a source of energy."[19] Another reason is pressure from the agro-industrial interests that will benefit from a rapid expansion in the production of agrofuels. As oil prices rise, it becomes more viable to invest in alternative energies, the "green gold" of biofuels.

25. In the present section, the Special Rapporteur uses the term "agrofuels" interchangeably with the more commonly used expression of "biofuels". Using the term "agrofuels" highlights how the interests of the agro-industrial monopolies will dominate over the interests of the world's poor and hungry, especially in the developing world. As E. Holt-Giménez of Food First has argued, the myths of the green and pure image of "biofuel" are being used to "obscure the political-economic relationships between land, people's resources and food, and fail to help us to understand the profound consequences of the industrial transformation of our food and fuel systems".[20]

26. If there are not conscious efforts to ensure that producing biofuels does not bring greater hunger in its wake, then the poor and hungry will be the victims of these new fuels.

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[16] See E. Holt-Giménez, "The biofuel myths", *International Herald Tribune*, 10 July 2007.

[17] Directive 2003/30/EC on the promotion of the use of biofuels or other renewable fuels for transport.

[18] Address to the United States Congress on 23 January 2007.

[19] Cited in Marcela Sanchez, "Latin America — the 'Persian Gulf' of biofuels?", *Washington Post*, 23 February 2007.

[20] E. Holt-Giménez, "The biofuel myths", *International Herald Tribune*, 10 July 2007.

A. Agrofuel

27. The two main types of agrofuel are bioethanol and biodiesel. Both are produced from a variety of food crops. Bioethanol is produced from sweet and starchy crops, which can be fermented to produce alcohol — mostly sugar cane and maize, but also sugar beet, potatoes, wheat or even manioc (the staple food of many African nations). Biodiesel is produced from vegetable oils by reaction of the oil with methanol.[21] The oils used are mostly from soya, palm or rapeseed, but also from peanuts, coconuts and many other oil-rich plants. P. Garde in his study on biofuels in Senegal points out that most of the plants used for agrofuels are food products and form the basic staple foods of millions of people in the poorest regions of the world, including in Africa, where food security is already seriously in peril.[22]

28. These food crops can be directly converted into energy and can be used to fuel cars and other transport. Up to 10 per cent of bioethanol can be mixed into normal petrol and can run in any car. Cars with specialized engines can also run on 100 per cent bioethanol, although so far Brazil is the only country to have made substantive progress with these cars. Biodiesel can also be blended directly into standard diesel and can be used by standard diesel engine cars. Adding between 5 and 10 per cent of biofuel to petrol and diesel can simply replace additives that oil companies normally add to improve combustion. Current forecasts therefore suggest that biofuels will account for less than 5 per cent of total transport fuel use in 2010. "Because most liquid biofuels will be consumed as blends with gasoline or petroleum diesel, biofuels will for some time to come be complements to petroleum-based transport fuels, not major competitors with them", the Director of Research of the Global Subsidies Initiative, Ronald Steenblik, has observed.[23] This means that, so far, oil companies do not feel threatened by the shift towards agrofuels. On the contrary, the global corporate monopolies of oil, grain, cars and biotechnology are rushing to consolidate partnerships: Archer Daniels Midland Company (ADM) with Monsanto, Chevron with Volkswagen, BP and DuPont with Toyota.[24]

29. Global production of agrofuels is currently dominated by one continent (the Americas) and one type of fuel (bioethanol). This bioethanol is produced mostly from maize (in the United States) or sugar cane (in Brazil).[25] The United States has doubled its production of bioethanol over the past five years and has now overtaken Brazil as the dominant producer. Brazil, which produced over 12 million tons of ethanol in 2006, much of it for the domestic market, plans to become a dominant producer for the global market by 2025.[26] By contrast, Europe's production of ethanol, at 3.5 million tons, is still relatively low. However, Europe dominates the production of biodiesel, using rapeseed oil and palm oil predominantly imported from India and Malaysia, although biodiesel production remains one tenth of total

[21] See Leo Peskett, Rachel Slater and others, "Biofuels, agriculture and poverty reduction" in *Natural Resource Perspectives* 107, Overseas Development Institute, June 2007.

[22] P. Garde, Les biocarburants au Sénégal comme outil de développement: oasis ou mirage, 2007.

[23] www.globalsubsidies.org/article.php3?id_article=6.

[24] E. Holt-Giménez, 2007.

[25] Institut nationale de la recherche agronomique.

[26] Georges Dupuy "La nouvelle bataille des champs", *L'Express*, 19 April 2007.

ethanol production.[27] Other than Brazil, few developing countries produce significant amounts, but China, Colombia, India and Thailand have started production. So far, production is focused on food crops in the "first generation" of agrofuels and there has been little production and investment in what are known as "second-generation" cellulose-based fuels which could convert non-food crops and agricultural wastes (for example, the fibrous stalks of wheat) for production.

30. Global consumption of agrofuels is low, but will rise rapidly under targets set in the European Union, the United States and Latin America. The European Union has set targets requiring that agrofuels provide up to 10 per cent of transport fuels by 2020.[17] The United States has also set targets to increase the use of agrofuel. But the target objectives cannot be met by agricultural production in the industrialized countries. It has been estimated that Europe would have to devote 70 per cent of its arable lands to agrofuel production to meet these objectives and the United States would have to convert its entire production of maize and soya into ethanol and biodiesel.

31. Therefore, the industrialized countries of the North are very interested in the production of the countries of the southern hemisphere to meet these needs.[28] According to FIAN International, the United States and the European Union are heavily dependent on imports from Latin America of soya, sugar cane and palm oil, some African countries, such as Nigeria, Cameroon, Ivory Coast and Ghana, for palm oil and Asian countries, including India, Indonesia and Malaysia, which are the main palm oil producers. Such production is also much cheaper in developing countries. For example, it is much cheaper to produce a litre of ethanol in Brazil (15 Euro cents) than in the United States (30 Euro cents) or Europe (50 Euro cents).[29]

B. The impact of biofuels on the right to food

32. The Special Rapporteur is charged with bringing to the attention of the United Nations emerging issues that may affect the right to food. The right to adequate food entails that all people have physical and economic access at all times to sufficient nutritionally adequate food. The right to adequate food also places obligations on Governments to respect, protect and fulfil the right to food, ensuring that food and nutrition security improves over time and that there are no direct violations of people's physical and economic access to sufficient food to maintain a dignified life.

33. Increasing the production of biofuels could bring positive benefits for climate change and for farmers in developing countries, including by improving food security, if the benefits trickle down. However, it is also important to examine the potential of biofuels to threaten the realization of the right to food. It is unacceptable that increasing production of biofuels should lead to greater hunger. The greatest risk is that dependence on the agro-industrial model of production will fail to benefit poor peasant farmers and will generate violations of the right to food. As the Brazilian Landless Workers' Movement argues, "the current model of

[27] United Nations Conference on Trade and Development (UNCTAD), "Challenges and opportunities for developing countries in producing biofuels" (UNCTAD/DITC/COM/2006/15), 27 November 2006.

[28] "Biocarburants: l'arnaque", No. 864, *Courrier international*.

[29] Ibid., p. 13.

production for bio-energy is sustained by the same elements that have always been the cause of the oppression of our peoples" — the appropriation of land, concentration of ownership and the exploitation of the labour force.[30]

34. In this preliminary analysis, the Special Rapporteur highlights a number of key concerns.

Increasing food prices

35. The prices of basic staple foods are likely to increase, threatening economic access to sufficient food, particularly for the poorest who already spend a high proportion of their incomes on food. The well-regarded think tank, International Food Policy Research Institute (IFPRI), has estimated that prices will rise dramatically in the near future if the production of biofuels is increased. It is estimated that there could be a rise of 20 per cent in the international price of maize between now and 2010, and 41 per cent by 2020. The prices of vegetable oil crops, especially soya and sunflower seeds could increase by 26 per cent by 2010 and 76 per cent by 2020, and wheat prices could increase by 11 per cent and then by 30 per cent. In the poorest regions of sub-Saharan Africa, Asia and Latin America, the price of manioc could rise by 33 per cent and up to 135 per cent by 2020.[31] IFPRI believes that this will set up a battle of "food versus fuel", unless there are urgent investments in moving to the second generation of biofuels that will not depend so much on food products. The consequences of such a rapid increase in food prices would be grave. IFPRI projects that the number of people suffering from undernourishment would increase by 16 million people for each percentage point increase in the real price of staple food. This could mean that 1.2 billion people would be suffering from hunger by 2025.

36. There are already reports that the global maize price has doubled over the past year.[32] Vast swathes of edible maize varieties have been replaced by industrial maize. There are serious concerns that, as the United States produces more than two thirds of the world's grain imports, the diversion of maize to ethanol distilleries will have a huge impact on global prices and availability, including for food aid. Mexico faced food riots in February 2007 after the price of maize tortillas rose by over 400 per cent in January 2007, severely affecting the poorest for whom the basic staple tortilla makes up 45 per cent of family expenses.[33] Although Mexico was traditionally a net exporter of maize, it has become a net importer because of so-called "free-trade" agreements, which have opened up Mexican markets to unfair competition with the dumping of subsidized maize exports from the United States and have displaced Mexican production. There are therefore serious risks for all developing countries that are net importers of basic staple foods.

37. Although increasing food prices should theoretically benefit millions of people working as peasant farmers in developing countries, this is not always the case. Many farming families are net buyers of staple foods, as they do not have enough

[30] Movimento dos Trabaladores Rurais Sim Terra (MST), "Full tanks at the cost of empty stomachs: the expansion of the sugarcane industry in Latin America", 28 February 2007, www.mstbrazil.org/?q=sugarcaneindustrybrazillatinamericamstanalysis2007.

[31] Mark W. Rosegrant and others, "Biofuels and the global food balance", *Bioenergy and Agriculture: Promises and Challenges*, Peter Hazell and P. K. Pachauri, eds. (IFPRI, 2006).

[32] Daniel Howden, "The fight for the world's food", *The Independent*, 23 June 2007.

[33] http://news.bbc.co.uk/2/hi/americas/6319093.stm.

land to be self-sufficient, and will therefore be affected by rising consumer prices. In addition, prices received by farmers at the farm gate are often exploitatively low, particularly for remote farmers with little choice of whom to sell their crops to, and often do not reflect global prices because of the greed of intermediaries. If increased agricultural production is to benefit poor peasant farmers, it will be essential to build mechanisms, such as cooperatives and non-exploitative out-grower schemes, that would ensure a trickle-down to the poorest.

Increasing competition over land and forests, and forced evictions

38. A rapid increase in the prices of food crops will intensify competition over land and other natural resources, including forest reserves. This will pit peasant farmers and indigenous communities of forest dwellers against massive agribusiness corporations and large investors who are already buying up large swathes of land or forcing peasants off their land. The Belgian human rights organization Human Rights Everywhere (HREV) has already documented forced evictions, the appropriation of land and other violations of human rights in the palm oil plantations in Colombia, documenting responsibilities of all the actors along the production chain.[34] Forced evictions constitute clear violations of the obligations to respect and protect people's existing access to food, and all corporations involved in the production of biofuels should avoid complicity in these violations.

39. Lessons must be learned from the more recent expansion of soya production across Latin America, which has contributed to the deforestation of vast swathes of the Amazonian basin and has resulted in the forcible eviction of many peasants and indigenous peoples from their lands. The non-governmental organization FIAN International has documented the complicity of agroindustrial corporations, large landowners and security forces in forced evictions in Brazil, Colombia, Argentina, Paraguay and Indonesia. In some cases, agribusiness companies urge peasants to sell their land, in others the companies occupy land without informing the communities who have been living there for decades. In Paraguay, where the area planted with soya has more than doubled since the 1990s (mainly in the regions of Itapúa, Alto Paraná and Canindeyú), many indigenous communities do not possess land titles and have been forcibly evicted. Houses, crops and animals were burned in the community of the Tetaguá Guarani, in the Primero de Marzo peasant camp and in the community of María Antonia. It is estimated that 350 similar cases occurred in Paraguay between 1990 and 2004. In Argentina, peasants and indigenous families have been evicted from their land in the provinces of Córdoba, Santiago del Estero, Salta, Mendoza, Misiones and Jujuy. Villagers in the province of Santiago del Estero have been systematically threatened by soya agribusiness, by the paramilitaries paid to protect it, and by the state police. In the Colombian region of Chocó, communities of indigenous people and people of African descent have been evicted from their land after oil palm growing companies occupied the land. Similar cases have been recorded in Indonesia and Cameroon.

Employment and conditions of work

40. Although the increase in agrofuel production could offer better employment, MST in Brazil has already protested the "slavery" conditions faced by workers on

[34] Fidel Mingorance, *The Flow of Palm Oil: Colombia-Belgium/Europe; A Study from a Human Rights Perspective* (HREV, 2007).

the country's sugar-cane plantations. Alexandre Conceicao, a member of the MST national leadership in the northern state of Pernambuco, has warned that "the social cost of this policy is the overexploitation of labour with an army of seasonal workers who cut one ton of sugar cane for 2.50 reals (1.28 dollars) in precarious conditions which have already caused the deaths of hundreds of workers". And Camila Moreno, an expert in agrarian development at the Rural University of Rio de Janeiro, has warned that the growth of the ethanol industry is breathing life into "a modern-day version of the sugar plantation slave-labour past".[35]

41. Although promises are being made that the production of biofuels will provide more jobs,[36] there are risks that, given competition over land with peasant farmers, biofuel production may result in greater unemployment. In Brazil, it is estimated that 100 hectares dedicated to family farming generate at least 35 jobs, while 100 hectares dedicated to industrial farming of sugar cane and oil palm plantations provide only 10 jobs, and of soybeans half a job.[37] If industrial farming takes over land formerly dedicated to family farming, the net effect will be fewer jobs. The possibilities for agrarian reform to increase access to land for landless families may also be halted. Biofuels can, however, be produced by non-industrial family farming that provides more employment: in Brazil, 30 per cent of sugar cane production is in the hands of 60,000 small producers.

Increasing prices and scarcity of water

42. The production of biofuels will require substantial amounts of water, diverting water away from the production of food crops. So far, few substantive studies have been undertaken to examine the impact of biofuel production on water resources and reflect the true environmental and social costs, although this was a central concern of the World Water Week international meeting held in Stockholm in August 2006. Rising prices of water would limit access to water for the poorest communities, in ways that would negatively affect the right to food.

C. Protecting the right to food in biofuel production

43. Rather than persuading us to use less energy, the false promise of agrofuels suggests that we can help the climate by simply changing fuels. Yet many studies have shown that agrofuels may not even be "carbon-neutral" or make much contribution to setting off carbon dioxide emissions, once account is taken of the fossil fuels that are still needed to plant, harvest and process food crops for biofuels under highly mechanized industrial models of production. Agrofuel production is unacceptable if it brings greater hunger and water scarcity to the poor in developing countries.

44. The Special Rapporteur therefore calls for a five-year moratorium on biofuel production using current methods, to allow time for technologies to be devised and regulatory structures to be put in place to protect against negative environmental, social and human rights impacts. Many measures can be put in place during such a

[35] http://ipsnews.net/news.asp?idnews=38051

[36] A. J. Ferriera Simões, "Biofuels will help fight hunger", *International Herald Tribune*, 6 August 2007.

[37] E. Holt-Giménez, "The biofuel myths", *International Herald Tribune*, 10 July 2007.

moratorium to ensure that biofuel production can have positive impacts and respect the right to adequate food. Such measures include:

(a) Promoting the need to reduce overall energy consumption and maintaining focus on all other methods of improving energy efficiency;

(b) Moving immediately to "second generation" technologies for producing biofuels, which would reduce the competition between food and fuel. Agricultural wastes and crop residues could be used. As IFPRI has pointed out: "the efficient exploitation of agricultural wastes presents significant potential for developing bio-energy without unduly disrupting existing agricultural practices and food production or requiring new land to come into production".[32] Common crop residues that can be used include maize cobs, sugar cane bagasse, rice husks and banana leaves. In this way, biofuel production could be complementary to existing agriculture, rather than competing with it, and would not require massive diversion of food, land and water resources away from food production. Food prices would therefore remain stable, but farmers would have profitable ways of disposing of agricultural waste products, benefiting both consumers and producers;

(c) Adopting technologies that use non-food crops, particularly crops that can be grown in semi-arid and arid regions. The cultivation of Jatropha Curcas, a shrub that produces large oil-bearing seeds, appears to offer a good solution as it can be grown in arid lands that are not normally suitable for food crops. Over half of Africa's arid lands are considered suitable for Jatropha cultivation and cultivating this plant would not only produce biofuel but could simultaneously provide livelihoods for African farmers, increase the productivity of the soil and reverse land degradation and desertification;

(d) Ensuring that biofuel production is based on family agriculture, rather than industrial models of agriculture, in order to ensure more employment and rural development that provides opportunities, rather than competition, to poor peasant farmers. Organizing cooperatives of small farmers to grow crops for larger processing firms would provide much more employment than the concentration of land into heavily mechanized expanses and plantations. As ActionAid has pointed out "Biofuel could even be an important tool to fight hunger and poverty if it comes together with a set of appropriate policies involving smallholder farmers."[38]

IV. Protection gaps for people fleeing from hunger

45. In many regions of the world, particularly in Africa, famine, destitution and chronic hunger are forcing people to leave their homes, lands and even their countries. For example, tens of thousands of young Africans flee their countries, risking their lives to try to reach Europe every year. Yet the international community does still not see hunger and violations of the human right to food as good enough reasons or sufficient legal grounds for people to flee their country and receive protection in another. Today, most Governments treat people crossing their borders without permission as criminals, even if they are fleeing from life-threatening consequences of hunger and severe violations of their human right to food. Most are detained and then forcibly repatriated to their countries, even if their lives will be threatened by hunger and famine in the country they are forced to return to. The

[38] www.actionaid.org/pages.aspx?PageID=34&ItemID=287.

Special Rapporteur considers this to be a shame on humanity. As the Office of the High Commissioner for Human Rights has rightly stated, "there is little to distinguish between a person facing death through starvation and another threatened with arbitrary execution because of her political beliefs".[39]

46. The Special Rapporteur therefore argues in the present section that legal protection must be extended to protect people fleeing from hunger and severe violations of their right to food. He calls for the creation of a new legal instrument to protect people fleeing from hunger and violations of the right to food. Under this new legal instrument, they would be recognized as "refugees from hunger" and granted, at the very minimum, the right of non-refoulement with temporary protection, so that they would not be sent back to a country where hunger and famine threaten their lives. While Governments always bear primary responsibility for respect of the right to food, if people flee their countries for their lives, receiving countries should not send them back to situations of hunger that threaten their lives. The Special Rapporteur believes that the increasing criminalization of migration will simply lead to further violations of the right to life and the right to food. The Special Rapporteur believes that only by recognizing their obligations to the world's refugees from hunger will all Governments finally take seriously their responsibility to eradicate global hunger. This means that rich, developed countries will see that they cannot avoid taking action to eradicate hunger across the world.

Fleeing from hunger

47. Millions of people, especially in sub-Saharan Africa, regularly face hunger, famine and other severe violations of their human right to food. According to FAO, 34 countries around the world are facing food crises in 2007, the majority of them in sub-Saharan Africa.[40] Levels of hunger in sub-Saharan Africa have been constantly increasing since 1990.[41] In the 14 poorest countries, more than 35 per cent of the population goes hungry every day, even during normal times when there is no drought or famine.[41] Hunger has increased most in countries torn apart by conflict during the 1990s, including Burundi, the Democratic Republic of the Congo, Liberia and Sierra Leone.[41] These close links between hunger and conflict have often been exacerbated when food and famine have also been used as weapons of war, as in many African countries, against certain groups or communities. Environmental degradation, desertification and global climate change are exacerbating destitution and desperation, especially in the highly arid countries of Sahelian Africa (see A/61/306). The International Panel on Climate Change has estimated that by 2050, there may be as many as 150 million "environmental refugees"[42] — people forced to leave their homes and lands for environmental reasons linked to global climate change, including desertification and land degradation. Policies in developed countries are further exacerbating these effects — energy consumption in the north is contributing to global climate change, with the effects felt primarily in the

[39] Office of the High Commissioner for Human Rights, Fact Sheet 20, *Human Rights and Refugees*.

[40] www.fao.org/docrep/009/j9247e/j9247e02.htm.

[41] FAO, *The State of World Food Insecurity in the World 2006*.

[42] Joanna Macrae and Anthony Zwi, "Food as an Instrument of War in Contemporary African Famines: A Review of the Evidence", *Disasters*, 16, No. 4, 1991.

south.[43] Most of these people, especially in sub-Saharan Africa, are not choosing to leave, but are being forced to flee. They are, quite literally, "refugees from hunger".

48. The vast majority of people who flee from hunger and famine do not cross international borders, but remain within their own countries, displaced from their places of origin, usually living in the mega-slums of the developing world.[44] But millions of people do cross international borders and some try to reach developed countries to escape pervasive hunger, especially people living in sub-Saharan Africa. It is estimated, for example, that about 2 million such people try to enter the European Union illegally every year and about 2,000 of them drown in the Mediterranean Sea. They try to reach the Canary Islands from Mauritania or Senegal, or to cross the Straits of Gibraltar from Morocco. According to the Government of Spain, 37,685 African migrants reached Spanish shores in 2005. Another 22,824 migrants reached the islands of Italy or Malta, leaving from the Libyan Arab Jamahiriya or Tunisia.[45] They also try to reach Greece through Turkey or leaving from Egypt. During 2006, the Spanish authorities detained at least 28,000 people arriving in the Canary Islands after a dangerous journey across the open sea in overcrowded open fishing boats.[46] Many arrive in a terrible condition, too weak to walk or stand and chronically undernourished. Yet most of them are detained and held in processing or detention centres, before being forcibly repatriated to their own countries.

49. Nobody knows how many thousands of people die while trying to make the journey, but bodies regularly wash up on the beaches or fishermen catch them in their nets.[47] On 18 December 2006, the international press reported that over 100 refugees drowned in one day off the coast of Senegal on their way to Spain.[48] However, nobody is counting. As Markku Niskala, Secretary General of the International Federation of the Red Cross has said: "This crisis is being completely ignored: not only does no one come to the help of these desperate people, but there is no organization that even compiles statistics that record this daily tragedy."[49]

50. If they survive the risks of crossing the seas, they face violence and human rights violations when they reach the shores of developed countries, as came to be highlighted by the outrageous tragedies that occurred in Ceuta and Melilla in 2005. On the night of 28 September 2005, at least five African men were shot dead when law enforcement officials confronted several hundred people trying to enter Spanish territory by climbing over two razor-wire fences separating Ceuta from Morocco.[49]

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[43] Molly Conisbee and Andrew Simms, *Environmental Refugees: The Case for Recongnition*, New Economics Foundation, 2003.

[44] Internally displaced persons are defined as persons who have been forced or obliged to flee or leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized border. Internally displaced persons are protected under human rights instruments and the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2, annex). Principle 18 reaffirms the right of internally displaced persons to an adequate standard of living and states that, at minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to, inter alia, essential food and potable water.

[45] *Tribune de Genève*, 14 December 2006.

[46] BBC News, 30 November 2006 (http://news.bbc.co.uk/go/pr/fr/-/2/hi/europe/6160633.stm).

[47] BBC News, 24 October 2006, http://news.bbc.co.uk/go/pr/fr/-/2/hi/talking_point/5404816.stm.

[48] *Le Courrier*, Geneva, 10 December 2006.

[49] Amnesty International, 3 October 2005, AI Index EUR 41/011/2005 at www.amnesty.org.

On 6 October 2005, another six men were shot dead on the Moroccan side of the border. Amnesty International called for an independent international investigation into these events, as well as into further reports that a number of people had been injured because of ill-treatment and the use of excessive force by Spanish and Moroccan security forces in Ceuta and Melilla.[50] Amnesty International also expressed serious concern about deportations from Spain back to Morocco after Medecins Sans Frontières reported that it had discovered more than 500 people abandoned in the desert on the Moroccan-Algerian border by the Moroccan police without any food or water.[50]

51. This tragedy of African refugees from hunger was a key focus of the World Social Forum on Migration held in Madrid in June 2006, and is also a focus of Africa's own extremely diverse and dynamic civil society, including during the African Social Forum held in Bamako in January 2006 and the World Social Forum held in Nairobi in January 2007. Special days of commemoration of the bloody events at Ceuta and Melilla were focused on the theme of "Globalization and African migration" (29 September to 7 October 2006 at Bamako). In the words of Aminata Traoré:

> The human, financial and technological resources that Europe's 25 countries have deployed against the inflow of African migrants, in fact, signify a real war between this world power and these young, defenceless, rural and urban Africans, whose right to education, right to economic information, right to work and right to food have been denied in their own countries under structural adjustment. Victims of macroeconomic decisions and choices, through no fault of their own, they are chased, tracked down and humiliated if they try to flee. The dead, the injured and the handicapped of the bloody events of Ceuta and Melila in 2005, as well as the hundreds of lifeless bodies that wash up on the beaches of Mauritania, the Canary Islands, Lampedus or elsewhere are also drowned by this forced and criminalized migration.

52. The response of the European Union to African refugees from hunger is increasingly to militarize immigration procedures and border patrol. Rapid reaction teams of border guards are acting a new institution called Frontex. Frontex's "Operation Hera II" involved patrol boats, aeroplanes and helicopters from Spain, Italy, Finland and Portugal operating along the borders of Mauritania, Senegal and Cape Verde to intercept boats and return them immediately to shore.[51] European Governments seem to believe that it is possible to address the drama of migration as a military and police problem. Refugees from hunger face ill-treatment in other regions also. The thousands of people who have been fleeing famine and food shortages in the People's Democratic Republic of Korea by crossing the border to China have often faced immediate deportation. Nationals of the People's Democratic Republic of Korea who are caught while crossing the border or who are deported by the Chinese authorities are very likely to be subjected to ill and degrading treatment,[52] including forced labour in prison camps in their country of origin.

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[50] Human Rights Watch, 13 October 2005 (http://hrw.org/english/docs/2005/10/13/spain11866.htm).

[51] BBC News, 10 September 2006 (http://news.bbc.co.uk/go/pr/fr/-/2/hi/europe/5331896.stm).

[52] See Amnesty International, 4 May 2000, http://web.amnesty.org/library/Index/ENGASA170212000?open&of=ENG-PRK.

Protecting people fleeing from hunger

53. Every human being has the right to food and the fundamental right to be free from hunger. These rights have been recognized in article 11 of the International Covenant of Economic, Social and Cultural Rights, as well as in many other international instruments, without any territorial or jurisdictional limitation (E/CN.4/2006/44). All States therefore have the obligation to respect, protect and fulfil the right to food of all people, living within their jurisdiction or in other countries. All Governments have a legal obligation to help people fleeing from hunger, regardless of their country of origin or status. By extension, the Special Rapporteur believes that this means that States have the obligation to protect people fleeing from hunger and famine.

54. It is a tragedy, however, that people fleeing from hunger are not granted adequate protections and frequently face violence and forcible repatriation. The existing legal framework of international human rights, humanitarian and refugee law does provide important protections, but these need to be seriously strengthened to cover the particular situation of "refugees from hunger".

55. Most people fleeing from hunger are refused entry and protection in other countries because they do not qualify as "refugees" in the traditional and legal sense. All Governments are legally obliged to receive asylum seekers and grant protection to refugees under international law, but the definition of "refugee" is very limited. The 1951 Convention relating to the Status of Refugees is the key legal instrument defining who is a refugee, his or her rights and the legal obligations of States. According to the 1951 Convention and its 1967 Protocol, a refugee is a person who,

> owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

Under the principle of non-refoulement set out in article 33 of the 1951 Convention, all people granted refugee status must be protected from expulsion or return in any manner whatsoever to the frontiers of territories where their life or freedom would be threatened on account of one or more of the grounds referred to in the definition of a refugee.

56. The principle of non-refoulement is a well-established principle of international law. It means that no person shall be rejected, returned or extradited to a territory where his life, physical integrity or liberty would be threatened. Accordingly, the Special Rapporteur on torture and other, inhuman or degrading treatment or punishment, Manfred Nowak, urged all Governments to "observe the principle of non-refoulement scrupulously and not expel any person to frontiers or territories where they might run the risk of human rights violations, regardless of whether they have officially been recognized as refugees" (A/60/316, para. 52).

57. Sadly, most people fleeing from hunger are not granted any of the protections that come with refugee status and the right of non-refoulement, even though they run the risk of grave violations of the right to food that amount to a threat to their

life. There have been some legal developments that broaden the understanding of who qualifies as a "refugee", but these are still limited.[53] One possible example could be that deprivation of food could amount to persecution of an individual where he or she was deprived of food because of persecution on the basis of race, religion, nationality, membership of a particular social group, or political opinion. Persecutory acts could include discriminatory food distribution policies, forced and unlawful eviction from land, denial of food or severe restrictions on an individual's ability to earn a livelihood or to have access to means for procuring food for him/herself or his/her family for reasons of his/her political opinion, religion or any other of the five grounds. However, so far, few such cases have been accepted, which means that the vast majority of people fleeing from hunger are not treated as refugees under the 1951 Convention.

58. Most people fleeing across international borders to escape hunger and starvation are therefore treated as illegal "economic migrants". Under migration laws, economic migrants may be legally accepted into another country, but this is at the discretion of each country's migration policy and standard procedures and is usually based on the country's own national interest. No country is legally obliged to accept people who are defined as "economic migrants", given that they have not been forced to leave their countries. Migrants are therefore not granted the same protections as refugees and have no right of non-refoulement that would protect them from being forcibly repatriated to their own countries.

59. However, to suggest that people fleeing from hunger and famine are simply "economic migrants" and are not being forced to leave, but are simply choosing to seek a better life, is to fail completely to recognize the life-threatening situation that they face. It is absurd to suggest that people fleeing hunger and famine are fleeing "voluntarily". The Special Rapporteur insists on this crucial point: refugees from hunger should not be confused with other categories of "economic migrants". When an "economic migrant" seeks a better life by migrating to another country, he does so voluntarily. The refugee from hunger, on the other hand, does not move voluntarily, but from a "state of necessity". He is forced to flee. Especially when famine strikes a whole country or a whole region (for example the 2005 famine in the Sahel zone of sub-Saharan Africa), refugees from hunger have no other choice but to flee across international borders. Hunger is an immediate threat to their lives and those of their families. They are fleeing out of a state of necessity, not out of choice.

60. The concept of a "state of necessity" (*état de nécessité*) is a well-developed concept and one that is well established in common and civil law in many countries. For example, the French criminal code (art. 122-7) provides that a person may not

[53] Legal developments in Africa and Latin America have broadened the concept to protect those escaping generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances seriously disturbing public order. Furthermore, some countries in other regions have established complementary protection regimes for persons who do not qualify as refugees under the 1951 Convention. In addition, the mandate of the United Nations High Commissioner for Refugees has been extended by the General Assembly to cover not only those persons who are refugees within the meaning of the 1951 Convention, but also persons outside their country of origin or habitual residence who are unable to return there owing to serious and indiscriminate threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order and who, as a result, require international protection.

be held liable for an act which would under normal circumstances constitute a crime if his/her conduct was necessary to av id a threat or a danger to him/herself or a third person and if that conduct was proportionate to the seriousness of the danger. In the well-known case of *Dame Ménard*,[54] a mother was not sentenced for stealing bread because she acted out of a state of necessity, unable to allow her children to starve. Canadian criminal law similarly allows for a defence based on necessity. The rationale for this was clearly spelled out in the case of *Perka v. The Queen*, where the Supreme Court of Canada affirmed that "a liberal and humane criminal law cannot hold people to the strict obedience of laws in emergency situations where normal human instincts, whether of self-preservation or of altruism, overwhelmingly impel disobedience".[55] Fleeing across international borders cannot be considered an illegal act when people are fleeing from hunger and famine.

61. In relation to hunger and famine, it is not difficult to establish objectively such a state of necessity. Both WFP and FAO issue regular reports that identify regions where there are chronic food emergencies and even identify the number of people suffering from acute and chronic levels of malnutrition. Based on this concept, it would therefore be possible to allow for the protection of refugees from hunger by recognizing that they have the right to seek asylum and the right to receive the protection of temporary refuge. In the longer term, it is essential to take into account the most severe violations of economic and social rights, including violations of the right to food, in determining who is of refugee status.

62. On the basis of this concept, the Special Rapporteur believes that it is objectively possible to establish who is fleeing from hunger and famine, rather than for other reasons. The urgent next step is therefore to create a new legal instrument that will establish the status of "refugees from hunger" and will provide them with the right of non-refoulement, so that they are not inhumanely deported back to countries in a state of famine. The Special Rapporteur believes that it is not possible to revise existing international instruments, including the 1951 Convention relating to the Status of Refugees, and therefore there is a need to develop a specially designed instrument that will protect people fleeing from hunger and other violations of the right to food.

63. The Special Rapporteur urges all States to consider the creation of a new legal instrument to protect people fleeing from hunger and violations of the right to food. Under this new legal instrument, they would be recognized as "refugees from hunger" and granted, at the very minimum, the right of non-refoulement with temporary protection, so that they are not sent back to a country where hunger and famine threaten their lives. While Governments always bear the primary responsibility for ensuring respect of the right to food, if people flee their countries for their lives, receiving countries should not send them back to situations of hunger that threaten their lives. Criminalizing refugees from hunger will not make the problem go away. In today's world, no country can isolate itself from the effects of hunger, when millions of people are increasingly desperate. It is time that legal protection is extended to all people fleeing from hunger and severe violations of their right to food.

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[54] Cour d'Amiens, *Dame Ménard*, 22 April 1898.

[55] Supreme Court of Canada (1984), 2 S.C.R. 232.

V. Conclusions and recommendations

64. **The Special Rapporteur puts forward the following conclusions and recommendations:**

(a) **Hunger is not inevitable. The lack of progress towards meeting the World Food Summit goal and the Millennium Development Goal of halving the proportion of people who suffer from hunger is unacceptable. All States should take immediate action to realize the human right to food of all their people. Lessons can be learned from the very positive examples of many Governments detailed in this report. The important initiatives of the Government of Bolivia observed by the Special Rapporteur during his mission to Bolivia in 2007 set an example for the rest of the world.**

(b) **All States should ensure that their international political and economic policies, including international trade agreements, do not have a negative impact on the right to food in other countries. In this context, European Union Governments must ensure that economic partnership agreements with Asian, Caribbean and Pacific countries do not negatively affect the progressive realization of the right to food in those countries and include safeguard mechanisms to allow appropriate responses to any resulting food insecurity and hunger. All international trade agreement negotiations should include the participation of all stakeholders, including civil society.**

(c) **States should establish a five-year moratorium on all initiatives to develop biofuels through converting food into fuel. This should provide time for an assessment of the potential impact on the right to food, as well as on other social, environmental and human rights, and should ensure that biofuels do not produce hunger.**

(d) **States should ensure that biofuels are produced from non-food plants, agricultural wastes and crop residues, rather than food crops, in order to avert massive rises in the prices of food, water and land and the diversion of these resources away from food production. This will require immediate massive investment in "second generation" technologies for producing biofuels.**

(e) **States should adopt appropriate measures to ensure that biofuel production is based on family agriculture, rather than agro-industrial methods, in order to avert creating hunger and instead create employment and rural development that does not bypass the poor.**

(f) **States should strengthen international and national protection mechanisms for people forced to leave their homes and land because of hunger or other severe violations of their right to food. In this regard, States should elaborate a new international legal instrument that will provide protections for all people fleeing from hunger who are not currently protected under international human rights, humanitarian or refugee law.**

(g) **At a minimum, States should extend the principle of non-refoulement to people fleeing hunger and starvation owing to a state of necessity, and refrain from deporting them. Governments should not expel, return or extradite a person to another country when there are substantial grounds for believing that he/she would be in danger of suffering from hunger, chronic undernourishment or other severe violations of the right to food. Governments**

should duly recognize the state of urgency that compels these people to flee and that they are entitled to receive temporary protection on the basis of the principle of non-refoulement.

(h) The right to food is a human right. Leaving people to suffer from hunger, famine and starvation is a violation of human rights.